



US Army Corps  
of Engineers  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

# PUBLIC NOTICE

Project: Bay Harbor Commerce Center, Contra Costa County

NUMBER: 28249S

DATE: March 1, 2005

RESPONSE REQUIRED BY: March 31, 2005

PERMIT MANAGER: Phelicia M. Thompson

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**1. INTRODUCTION:** Mr. Reid Settlemier of Bay Point Venture One, LLC, 10700 Bigge Avenue, San Leandro, CA 94577, through his agent The Huffman-Broadway Group, Inc. (Terry Huffman; 415-925-2000), 700 Larkspur Landing Circle, Suite 100, Larkspur, California 94939, has applied for a U.S. Army Corps of Engineers (Corps) permit to discharge fill material into 1.25 acres of seasonal palustrine emergent wetlands under Corps jurisdiction in order to construct a light industrial-business park project. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

## 2. PROPOSED PROJECT:

**Project Site:** The project is located in the Bay Point section of Contra Costa County, California (Figure 1) north of Highway 4. The project site is generally located at the northeast intersection of Port Chicago Highway and Pacifica Avenue. To the north is the Sacramento Northern Railroad; to the south are single family residential uses; to the west beyond Port Chicago Highway are retail commercial land uses and residential development and to the east is vacant land zoned H-I (Heavy Industrial). The project is accessed from Port Chicago Highway from Willow Pass Road.

The relatively flat project site is located near the Suisun Bay margin in an urban area that has undergone significant human disturbance, including vegetation removal, soil compaction, disking, grazing and alteration of natural hydrological drainage patterns. The project site is dominated by non-native annual grassland.

Water from the County's stormwater system enters the site on its western border through a 66-inch-diameter outfall pipe routed under Port Chicago Highway. It flows easterly across the project site in a channel, which is a rechannelized historic drainage, leaving the site on its northern boundary. Similarly, storm water from the neighboring urban residential development enters the project site from three outfalls along the project site's southern boundary. There are three depressional wetland features at the terminal ends of the storm water outfalls. The most eastern of the three depressional areas forms a seasonal wetland that flows to the north across the project site. Drainage ditches exit the other two depressional areas, which function as settling basins. The two drainage ditches traverse the site in a northerly direction prior to entering the easterly-flowing channel.

The project site was zoned "H-I Heavy Industrial District" by the County. However, the project site is located in the Bay Point Redevelopment Plan Area and is targeted by the County Community Development Department for light industrial uses. The County has granted a land use permit that approves light industrial-business park land uses on the property.

**Corps Jurisdiction:** The approximately 45-acre project area includes 3.95 acres of wetlands that are subject to Corps jurisdiction. This acreage is comprised of the 0.81 acre of palustrine emergent seasonally-flooded excavated wetlands associated with the settling basins; 2.85 acres of palustrine emergent seasonally-flooded wetlands associated with low-lying depressions; 0.18 acre of palustrine

emergent seasonally-flooded excavated wetlands associated with the rechannelized historic drainage; and 0.11 acre of palustrine emergent seasonally-flooded excavated wetlands associated with the drainage channels (Figure 2).

**Project Description:** As shown in the attached drawing (Figure 3), the applicant plans to develop a light industrial-business park development comprised of 21 lots, ranging from 0.89 acre to 4.23 acres, and associated infrastructure. Off-street parking would be provided as required by the County's development standards.

The project also proposes the installation of flood control improvements. The applicant proposes to install two 66-inch storm drain pipes to accommodate the County's storm water, which enters the site on the project's western border, and to accommodate a portion of the onsite storm water runoff. The new pipes will carry the drainage east, from its terminus immediately east of Port Chicago Highway, within a road right-of-way on the project site, to a location east of Lot 11. From that point, the applicant proposes to create a 15-foot-wide treatment channel to carry the drainage to the remaining portion of an existing channel (Figures 3 and 5).

Similarly, as part of site improvements, the applicant proposes to fill the two more southern drainage ditches and pipe the storm water drainage originating from the southern residential area and a portion of the onsite storm water runoff to a storm drain flowing east across the site before going north to discharge to a 20-foot-wide grass-lined treatment channel. This channel will also drain to the remaining portion of an existing channel (Figures 3 and 5).

**Purpose and Need:** The basic purpose of the proposed project is the construction of a light-use industrial-business park. The overall project purpose is the construction of light-use industrial-business park serving the Bay Point area of eastern Contra Costa County.

The applicant states that there is a clear public need for the proposed Bay Harbor Commerce Center

because it would satisfy the following documented needs: (1) Implement the Contra Costa County Community Development Department's redevelopment plans for a portion of the Bay Point area resulting in job creation and increased tax base for the County; (2) Increase the job supply for the Bay Point area which presently faces a significant jobs to housing imbalance; and (3) Develop an area of the County that is underutilized.

**Impact:** The project will discharge approximately 20,000 cubic yards of fill into 1.25 acres of jurisdictional wetlands, comprised of 1.01 acres of seasonal wetlands and 0.24 acre of seasonal wetland drainages. The applicant has avoided 2.70 acres of seasonal wetlands.

**Mitigation:** The applicant has proposed to create 1.54 acres of wetland area to compensate for impacts to jurisdictional wetlands (Figures 3 and 4). In addition, the applicant has proposed a \$10,000 contribution towards restoration of the Kirker Creek Watershed to offset impacts to the drainage that will be impacted by the project. The applicant has also proposed to preserve an approximately 0.80-acre upland landscaped buffer adjacent to the preserved wetland area (Figure 3). All proposed mitigation plans are subject to review and approval by the Corps.

### 3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act of 1969 (NEPA):** The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Parts 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San

Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

**Endangered Species Act of 1973 (ESA):** Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Based on information regarding habitat requirements of federally-listed threatened and endangered species that could occur on the project site and the results of protocol-level surveys for the California tiger salamander (*Ambystoma californiense*) and the California red-legged frog (*Rana aurora draytonii*), the Corps has made a preliminary determination that the proposed project will have no effect on any federally-listed threatened or endangered species or designated critical habitat.

**Magnuson-Stevens Fisheries Conservation and Management Act:** NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. The proposed project will not adversely affect EFH.

**Clean Water Act of 1972 (CWA):**

**a. Water Quality:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant received State water quality certification on November 24, 2004.

**b. Alternatives:** Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is not water or wetland dependent. The applicant has not submitted an

Analysis of Alternatives and has been informed that such an Analysis is required and will be reviewed for compliance with the guidelines.

**Coastal Zone Management Act of 1972 (CZMA):** Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's certification. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

**4. PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property

ownership, and, in general, the needs and welfare of the people.

**5. CONSIDERATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

**6. SUBMISSION OF COMMENTS:** Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Phelicia M. Thompson of our office at telephone 415-977-8452 or E-mail: Phelicia.M.Thompson@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.